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No. 10-685 (2)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

GERALD W. KELLY and JUST JERRY'S, INC.
t/a and d/b/a SCOREBOARD RESTAURANT & TAVERN

Petitioners,

v.

ABINGTON TOWNSHIP, ABINGTON TOWNSHIP POLICE DEPARTMENT and WILLIAM J. KELLY, CHIEF

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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COUNTER STATEMENT OF ISSUES PRESENTED FOR REVIEW

Properly analyzed, the question presented by the petitioner in this case encompasses 3 issues:

1) Whether the Court of Appeals properly denied the motion for rehearing en banc when the plaintiff failed to establish the showing necessary to recall the mandate nor established an issue requiring rehearing.

2) Whether denial of the motion to recall the mandate was proper when the plaintiff failed to establish extraordinary circumstances or a miscarriage of justice.

3) Whether the Court of Appeals' denial of the motions for re-hearing, to recall the mandate, or for reconsideration constituted a denial of due process.

STATEMENT OF THE PARTIES TO THE PROCEEDING

The parties to the appeal from which this Petition arises are limited to plaintiff Gerald W. Kelly and his company, Just Jerry's Inc., t/a and d/b/a Scoreboard Restaurant & Tavern, and defendants Abington Township, Abington Township Police Department, and Chief William Kelly.

The other plaintiffs in the caption were no longer in the case when the district court issued its order in July 2008. Further, the plaintiff's appeal to the Court of Appeals for the Third Circuit addressed only the allegations against the municipality and Chief Kelly, with the claims against all the other defendants being waived. (App. 9a)

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I. FACTS RELEVANT TO THE ISSUES SUBMITTED FOR REVIEW

This petition stems from the second appeal in this case which was decided by the Court of Appeals for the Third Court. *See, generally, Watson v. Abington Twp.*, 478 F.3d 144 (3d Cir. Pa. 2007). In the first appeal, the Court of Appeals affirmed the dismissal of all the plaintiff's claims, save for those based on the Fourth Amendment. *Id.* The Court held that the dismissal of those claims on a 12(b)(6) motion was premature and required discovery. *Id.* The case was returned to the District Court. After discovery was conducted, the defendants moved for summary judgment, which was granted in part by the Honorable Patrice B. Tucker, U.S.D.J. (A4) The plaintiffs appealed part of the ruling, granting summary judgment to Chief William J. Kelly and the municipality, but did not challenge the grant of summary judgment to the other officers. (A1)

The appellant, plaintiff Gerald Kelly, was the owner of the Scoreboard Restaurant & Tavern and is a former police officer who retired from the Abington Police Department in 1993. (See, complaint, at 4,7) Upon his retirement, Mr. Kelly became the owner of the Scoreboard, located at 1114-16 Old York Road in Abington, Pennsylvania. (*Id.*) Chief Kelly was the Abington Township Police Chief for all the relevant events in this case. (A48)

In part relevant to this appeal, the plaintiff's complaint alleged that the Abington Police Department performed "sweeps" of the Scoreboard, in which uniformed officers would enter the establishment to deter underage drinkers. (See, Complaint, at 11-17) The sweeps commenced in 1999, and were funded pursuant to grants provided

by the Commonwealth of Pennsylvania. (A56, et seq.) Abington Township obtained a renewable grant from the Juvenile Justice Commission, which included $7,500 for law enforcement officials to conduct twice-yearly sweeps of problem bars in the municipality. (*Id.*)

The sweeps themselves were conducted at the direction and under the supervision of Lt. Peter Hasson. (See, Deposition of Lt. Hasson, attached as Exhibit to 9/30/2004 Motion for Summary Judgment.) He chose the times and locations where the sweeps occurred in a random fashion so there could be no basis for alleging that any one bar was swept more frequently than any other. (*Id.*)

Lt. Hasson testified that the interaction he had with Chief Kelly regarding the sweeps essentially consisted of him informing him, in a very general fashion, the day after each of the sweeps. (*Id.*) This was not done on Chief Kelly's direction, but merely because Lt. Hasson thought it proper to keep Chief Kelly informed. (*Id.*)

The dates of the sweeps of the Scoreboard were: May 20, 1999, December 17, 1999, August 3, 2000 and November 16, 2000. The sweeps all occurred in the evening, as were the checks at every other bar which were conducted in Abington Township. (*Id.*) Mr. Kelly was never there for any of the age checks. On May 20, 1999, nine underage drinkers were found at The Scoreboard. None were found on December 17, 1999. On August 3, 2000, five underage drinkers were found at The Scoreboard. The final sweep was done on November 16, 2000. (*Id.*)

The testimony in this case also established that Chief Kelly was only present during one sweep, but he never entered the premises. (A54-55) He responded when assistance was requested to take custody of and process the large number of underage drinkers found at the Scoreboard. (*Id.*) He remained outside the bar and never entered the establishment. (*Id.*)

During discovery, the deposition was taken of Major John Lutz, Director of the Pennsylvania State Police Bureau of Liquor Code Enforcement. Major Lutz testified that The Scoreboard Lounge was, at the time of Abington Township Police Department's sweeps, open to the public. (A42-A43). The records of the Liquor Control Board reveal that on numerous occasions, underage drinkers were cited for violation of Pennsylvania Crimes Code, Section 6308, referring to underage drinking, at the Scoreboard Lounge. (A-42).

Those same records reveal that the Liquor Control Enforcement Unit, not the Abington Township Police Department, cited the plaintiff at least four times for violation of the Liquor Code:

1. Citation #99-0176 - $1,000 fine for sales to a minor.

2. Citation #99-1371 - $1,250 fine for sales to minors and minors frequenting.

3. Citation #99-1769 – three day suspension for sale to minors.

4. Citation #00-1784 – for the establishment's fourth violation in a one year period.

(Citations, attached as Exhibit "C" to 11/8/2007 Summary Judgment Motion) In each of the four instances, plaintiff waived his rights and executed a statement of waiver, admission and authorization. (*Id.*; A42.)

Furthermore, Officer Karen Hearn, an Enforcement Officer with the Liquor Control Board, was deposed and testified that it was part of the traditional function of law enforcement to check establishments such as The Scoreboard for underage drinking. (Hearn Deposition, attached as Exhibit "D" to 11/8/2007 Summary Judgment Motion, at 8). Major Lutz testified that the decision to check for underage drinkers is one left to the municipality and its District Attorney. (A-43).

The defendants filed a motion for summary judgment, on November 8, 2007. A cross-motion was filed by the plaintiff on November 9, 2008. On July 31, 2008, Judge Tucker issued her opinion and order. (A4-A20) She first found that the plaintiffs had established a violation of the Fourth Amendment in the warrantless seizure of the plaintiff's bar. (A11-A16) However, she then found that there was no evidence that Chief Kelly took part in the sweeps, that the individual officers and Chief Kelly and were entitled to qualified immunity, that the *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978) claim for municipal liability had to be dismissed because the plaintiff failed to establish any policy or custom. (A16A20)

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1. This fourth violation was for bad checks, 47 P.S. §4-493 (26).

On August 29, 2008, the plaintiff filed a notice of appeal, appealing the decision by Judge Tucker that found in favor of Chief Kelly and Abington Township. (A1) The plaintiff did not pursue the claims against the individual officers that were dismissed. On September 10, 2008, the defendants took protective cross appeal, arguing that Judge Tucker erred in finding that the plaintiff established a violation of the Fourth Amendment. (See, Notice of Cross Appeal)

On July 15, 2009, the Court of Appeals for the Third Circuit issued its nonprecedential opinion affirming the grant of summary judgment by the District Court. (App. 3a-13a) On August 3, 2009, the plaintiff, pro se, filed a motion for an extension of time to file a petition for re-hearing, based on the retirement of his counsel. (See, Motion for Extension of Time.) An Order granting that motion was also filed on August 3, 2009, and the plaintiff was given until September 8, 2009 to file the petition for rehearing.

No petition for rehearing was filed in the time allotted, and so, on September 9, 2010, the Court of Appeals issued its mandate. (See, Letter Enclosing Judgment.) Notice of the filing of the mandate was sent to the plaintiff directly and through his previous counsel. (*Id.*)

Approximately a month later, on October 13, 2009, the plaintiff's current counsel, Nino V. Tinari, Esq., filed a Petition for Rehearing En Banc on behalf of the plaintiff, but he did so in the District Court for the Eastern District of Pennsylvania, and not in the Court of Appeals. (See, District Court docket.) An electronic confirmation of that filing in the district court was sent to the plaintiff's

attorney. (See, opposition to the motion to recall the mandate, Exhibit "E")

The matter remained filed in the district court, with no action taken, until June 11, 2010, at which time Mr. Tinari entered his appearance in the Court of Appeals. (See, Court of Appeals Docket.) Three days later, on June 14, 2010, he filed motions for re hearing en banc, for leave to proceed out of time, and a motion to recall the mandate. (*Id.*)

After responses were filed to the motion to proceed out of time and the motion to recall the mandate, the Court of Appeals issued its July 8, 2010 order denying all of the plaintiff's motions. (App. 1a-2a). The plaintiff filed a motion for reconsideration of the July 8, 2010 order, which was denied by order dated August 5, 2010. (App. 35a-36a)

The plaintiff's petition for certiorari to this Court follows.

II. ARGUMENT AGAINST ISSUING THE WRIT OF CERTIORARI

A. THE CONSIDERATIONS PREFERRED BY THIS COURT WHEN GRANTING CERTIORARI ARE NOT PRESENT HERE

Rule 10 of the Supreme Court Rules details the reasons which this Court considers compelling when determining whether to exercise its prerogative and issue a writ of certiorari.

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of

> erroneous factual findings or the misapplication of a properly stated rule of law.

SUP. CT. R. 10.

None of the considerations of Rule 10 are present in the plaintiff's petition for a writ of certiorari. The plaintiff's claim is, at heart, a request for this Court to act as an error-correcting court and to review what the plaintiff sees as an erroneous denial of the motion for rehearing en banc, denial of the motion to recall the mandate and the denial of the motion for reconsideration.

None of these matters even remotely address any of the concerns for which this Court normally reserves certiorari. For that reason, and because there is no basis for the plaintiff's assertions of error, the petition for writ of certiorari should be denied.

B. THERE WAS NO ABUSE OF DISCRETION IN THE COURT OF APPEALS DENYING THE PETITION FOR REHEARING EN BANC.

Denial of the petition for Rehearing En Banc was not erroneous. Rehearing en banc is a form of discretionary review. *Western P. R. Corp. v. Western P. R. Co.*, 345 U.S. 247, 272 (U.S. 1953); *United States v. Coney*, 120 F.3d 26, 28 (3d Cir. Pa. 1997)("en banc rehearing by the courts of appeals is discretionary.") The denial of the plaintiff's petition for such review was not an abuse of discretion for two reasons: first, the mandate was issued prior to his filing the motion and he failed to establish a basis to recall the mandate. Second, there was no error in the decision in the July 15, 2009 Opinion of the Court of Appeals.

There Was No Error In Not Recalling The Mandate

First, it was not an abuse of discretion to deny the petition for rehearing en banc, because the plaintiff failed to meet the standard required for the Court of Appeals to recall the mandate.

The issuing of the mandate marks the formal end of the Court of Appeal's jurisdiction in a matter. *Johnson v. Bechtel Associates Professional Corp., D.C.*, 255 U.S. App. D.C. 198, 801 F.2d 412, 415 (D.C. Cir. 1986); see *United States v. Jerry*, 487 F.2d 600, 607 (3d Cir. 1973).

Moreover, this Court has stated that although "the courts of appeals are recognized to have an inherent power to recall their mandates, subject to review for an abuse of discretion . . . the power can be exercised ***only in extraordinary circumstances . . . [and] is one of last resort***, to be held in reserve against ***grave, unforeseen contingencies***." *Calderon v. Thompson*, 523 U.S. 538, 549-550, 118 S. Ct. 1489, 140 L. Ed. 2d 728 (1998) (citations omitted, emphasis supplied). It should also be noted that the act of recalling the mandate, other than to avoid a miscarriage of justice, constitutes an abuse of discretion. *Id.*, 523 U.S. at 558.

In explaining that recall may be warranted for good cause, to prevent injustice, or in special circumstances, the Third Circuit Court of Appeals, citing *Greater Boston Television Corporation v. F.C.C.*, 463 F.2d 268 (D.C. Cir. 1971), identified five situations which would justify recalling the mandate:

1) where clarification of the mandate and opinion is critical;

2) where misconduct has affected the integrity of the judicial process;

3) where there is a danger of incongruent results in cases pending at the same time;

4) where it is necessary to revise an "unintended" instruction to a trial court that has produced an unjust result; and

5) where a subsequent Supreme Court decision showed that the original judgment was demonstrably wrong.

American Iron & Steel Institute v. EPA, 560 F.2d 589, 593-95 (3d Cir. 1977). None of those circumstances was present in this case. In this case, after the retirement of his previous counsel, the plaintiff pro se filed for an Extension of Time to File Petition for Rehearing, which was granted by the Court of Appeals. The order was issued on August 3, 2009 and gave the plaintiff until September 8, 2009 to file for rehearing en banc. The order was sent to both the plaintiff, himself, and the plaintiff's previous attorney.

The plaintiff's current attorney was retained on August 19, 2009. The plaintiff's Petition for Rehearing En Banc was not filed by September 8, 2009, as required by the August 3, 2009 order, so on September 9, 2009, the mandate was issued.

Over a month later, on October 13, 2009, the plaintiff's new counsel filed a Petition for Rehearing En Banc on behalf of the plaintiff, but did so in the district court. Thus, at the point the plaintiff misfiled his Petition for Rehearing, the jurisdiction of the Court of Appeals had ended approximately one month earlier.

The plaintiff's argument in connection with his argument to recall the mandate failed to explain why the motion was filed after the issuing of the mandate and in the wrong court, except to blame it on an "extraordinary oversight" by an unnamed associate.

However, the notion that this misfiling presents extraordinary circumstances or constitutes a grave condition, sufficient to recall the mandate, because the error was supposedly the work of an unnamed associate, is wholly untenable.

First, this petition was not filed in the name of this unknown associate, but was filed in Mr. Tinari's name. As such, he was responsible for seeing that it is properly filed and he was responsible for supervising any associate he might assign to work on this matter. Moreover, while the plaintiff stated in his petition that Mr. Tinari was unaware of the error in filing this matter until a telephone call from Mr. Kelly on June 10, 2010 alerted him to the problem, Mr. Tinari knew or should have known of the misfiling, as he was the attorney of record in the district court and, as such, was sent the Notice of Electronic Filing to his email address, nino@ntinarilaw.com. (See, Notice, attached as Exhibit "E" to Opposition to the Motion to Recall the Mandate) That notice clearly and unmistakably notes that the document was filed in the United States District Court

for the Eastern District of Pennsylvania, and warns that the case was closed on February 1, 2006, a clear sign that the pleading was not filed in the correct court.

As such, as the plaintiff did not establish any extraordinary circumstance or grave condition which justified the Court of Appeals in recalling the mandate, the Court of Appeals properly exercised its discretion in denying the plaintiff's motion to recall the mandate. As such, the Court had no jurisdiction to reconsider the matter en banc, so the denial of that motion, too, was proper.

There Was No Error In Affirming The District Court Order

The denial of the motion for rehearing en banc would also have been appropriate, aside from the issue of the mandate, as there was no error in the affirmance of the District Court's decision.

The plaintiff asserted on appeal that Chief Kelly should be found personally liable for the supposed violation of the plaintiff's Fourth Amendment rights, based solely on the fact that he was present during one of the raids on the plaintiff's business while it was violating the law by serving alcohol to minors.

However, Chief Kelly did not participate in the sweeps. So even if it is assumed that the sweeps constituted a violation of the Fourth Amendment, Chief Kelly cannot be held liable merely he was present. Mere presence during an alleged violation of the Fourth Amendment does not confer personal liability. The law is clear that for liability

to attach, the defendant must actually take part in the alleged violation.

"A defendant in a civil rights action must have personal involvement in the alleged wrongs" in order to be liable. *Sutton v. Rasheed*, 323 F.3d 236, 249 (3d Cir. 2003) (*citing Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988)). *See, also, Abbott v. Latshaw*, 164 F.3d 141, 147 (3d Cir. 1998)(no liability to officers present during alleged illegal seizure of property during self-help repossession, where the officers did not participate in acts constituting seizure.)

In a 42 U.S.C. § 1983 lawsuit, defendant must have had personal involvement in the alleged wrong, as liability cannot be based solely on the doctrine of agency or respondeat superior theory. *Paratt v. Taylor*, 451 U.S. 527, 537 n. 3 (1981). Thus, in order to successfully establish individual liability, plaintiff must plead, and ultimately prove, that a defendant was personally involved in the conduct, or that the defendant had actual knowledge and acquiesced in said conduct. *Rode v. Dellarcripete*, 845 F.2d 1195, 1207 (3d Cir., 1988).

In this case, Chief Kelly did not participate in the underage sweep of the plaintiff's bar; he was on the scene during one sweep to help facilitate the arrest and custody of the underage drinkers that the plaintiff was serving with alcohol. Chief Kelly specifically noted that he did not enterer the plaintiff's bar on the night of the sweep.

Q: ...In 1997 did you participate in a sweep in 1997 Scoreboard Bar and Restaurant?

A: There was one sweep that I was there.

Q: Is it 1997?

A: I don't know when it was.

Q: When is it that you were there?

A: On of the first ones I think.

Q: And is it one of those sweeps that were non pursuant to this grant that's been talked about as far as Kelly-1?

A: As I've said, to the best of my knowledge, the only time we did bar sweeps were those pursuant to the grant.

(A54-A55)

Q: ... Well, if you had participated in one of those sweeps, wouldn't your name being listed as one of the officers on one of these documents?

A: I don't know if it was one of the ones that's listed in this group that you have here or if my name is up top or whatever.

* * *

A: ...you have to understand, an individual officer is assigned to write the report and if they don't get everybody's name there or whatever then it wouldn't be there, but there was one that – I don't even remember all the circumstances. ***I never went in the***

> ***bar.*** All I did was help because there was a large number of kids that were getting arrested and I was helping with handling and transporting all these kids that were getting arrested.
>
> Q: Yourself?
>
> A: Pardon me?
>
> Q: You were doing that yourself?
>
> A: I was helping the people who were doing it, yes, because – the reason I was there was because they indicated that there is – can you send some more officers, we got all these kids we're going to be taking in...

(A55, emphasis added)

> Q: Okay. Was Jerry Kelly present?
>
> A: I'm not sure. ***I didn't go in. I never went in the bar*** and – but, I can't remember whether Jerry was there or not.

(*Id.*, emphasis added.) There was no evidence contradicting this testimony. Thus, it is clear that while Chief Kelly was on the scene on one occasion to help handle and transport the many underage drinkers which were found at the plaintiff's bar, he, himself, never went into the bar.

Thus, if, as the plaintiff suggests, the underage sweep constituted a seizure of the bar, then Chief Kelly could not

be found liable for that supposed seizure; the most that can be said about Chief Kelly's personal liability was that he was a witness to the event. He was not a participant and his mere presence and non-participation during the alleged seizure is insufficient to establish a viable claim against him.

Further, the plaintiff attempted to establish liability by asserting that Chief Kelly was the "top ranking commander of the Abington Township police between 1990 and 2001 and therefore directed his subordinate officers to violate Appellants' Fourth Amendment Rights." (Plaintiff's brief at 17). However, nothing in this record substantiates the claim that Chief Kelly "directed" the officers to do anything, let alone to violate anyone's rights. As the Court of Appeals and the district court recognized, the record clearly establishes that the raids were planned and conducted by Lt. Peter Hasson.[2]

The mere fact that Chief Kelly was the highest-ranking officer in the department is not sufficient to establish that he is individually liable for everything that any of his subordinate officers does, especially here, where there is simply no evidence whatsoever that he had any direct participation in any unlawful conduct. *See, Brown v. Grabowski*, 922 F.2d 1097, 1119-20 (3d Cir. 1990)(a supervisor's mere failure to train, supervise or discipline subordinate officers does not state a basis for a § 1983 claim against the supervisor absent proof of direct participation by the superior in some unlawful conduct.)

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2. It must be noted that although Lt. Hasson was the officer who planned and conducted the underage sweeps that the plaintiff complains of, the plaintiff neither sued Lt. Hasson nor attempted to have him added to the litigation.

As such, the plaintiff could not establish a violation sufficient to support the § 1983 action, and dismissal pursuant to qualified immunity was proper. *Malley v. Briggs*, 475 U.S. 335, 341 (1986) Further, the denial of the claim for municipal liability under *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978) was proper because the Chief Kelly took no action from which the municipality might be held liable. (App 11a-12a)

The plaintiff cites to *U.S. v. City of Philadelphia*, 644 F.2d 187 (3d Cir. 1980), in support for the notion that the petition for rehearing en banc should have been granted. However the petition for rehearing en banc was denied in City of Philadelphia. Although some of the Judges dissented, that dissent does not represent the decision of the Court and cannot establish that the denial in this case was erroneous.

Thus, there was no error in the Court denying the motion for rehearing en banc.

C. THE COURT OF APPEALS PROPERLY DENIED THE MOTION TO RECALL THE MANDATE.

As detailed in the preceding section, there was no error in the Court of Appeals denying the plaintiff's motion to recall the mandate. The plaintiff simply failed to show an extraordinary circumstances or a miscarriage of justice or give any explanation for the late filing or the filing in the wrong court, sufficient for the Court of Appeals to exercise its discretion in recalling the mandate. Those arguments are adopted here by reference.

D. THERE WAS NO ERROR IN THE COURT OF APPEALS' CONSIDERATION OF THE PLAINTIFF'S MOTIONS.

Finally, the plaintiff asserts that it was error for the Court of Appeals to deny his motion for reconsideration without allegedly applying or stating the standard it applied.[3]

The plaintiff presented nothing in his motion for reconsideration which addressed the issues germane to recalling the mandate; rather, he merely restated his allegation that the a former associate had mishandled the filing of the motion for rehearing en banc, without given any explanation why it was filed beyond the extension given by the Court of Appeals, beyond the issuance of the mandate, and in the wrong court.

As such, under the standard laid out in *Calderon*, *supra.*, the failure of the plaintiff to demonstrate extraordinary circumstances or that a miscarriage of justice would occur in the absence of recalling the mandate—neither of which was present on the face of the plaintiff's motions—mandated the denial of the plaintiff's motions. Rather than failing to apply any standard, the Court of Appeals applied the correct standard and denied the motion.

Further, the plaintiff provides no authority that the Court of Appeals' denial of a motion without accompanying

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3. The plaintiff's argument in this section is muddled, as it refers to the "motion to recall," but clearly cites the order of August 5, 2010, which was the denial of the plaintiff's motion for reconsideration of the denial of the motion to recall the mandate.

opinion constituted a violation of due process, as the issuance of such an order without separate opinion is not, per se, unconstitutional. *See, e.g., Papageorgiou v. Gonzales*, 413 F.3d 356, 359 (3d Cir. 2005) ("We agree with our sister courts of appeals . . . that the streamlining regulations [which allow for BIA affirmances of IJ decisions without separate opinions] do not violate the Due Process Clause of the Constitution.") As such, the claim that due process was violated here is simply untenable.

For the reasons set out in the Courts' opinions, it is clear that there was no error in finding n the defendants' favor. Further, there was no error in the denial of the plaintiffs' motions for rehearing en banc, to recall the mandate and for reconsideration. Consequently, the petition for certiorari should be denied.

III. CONCLUSION

For all of the foregoing reasons, this Court is respectfully requested to deny the plaintiff's Petition for Writ of Certiorari.

Respectfully Submitted,

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